

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

FILED

SEP 20 2012

U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEPUTY CLERK

LUIS CARPIO

v.

UNITED STATES OF AMERICA

CASE NO: PE-11-CA-00128-RAJ

OBJECTION TO RESPONDENT'S MOTION TO DISMISS

Petitioner objects to the Respondent's Motion to Dismiss the §2241 petition for relief filed with this Court and submits that the government is laboring under a misunderstanding of the Fifth Circuit's opinion in Gallegos-Hernandez and their reliance on said ruling is without grounds.

The Fifth Circuit held that ICE detainees are not eligible for the benefits sought by Petitioner but failed to distinguish between an ICE detainee and a federal inmate, incorrectly assuming that they were one and the same. However, according to BOP Program Statement 5330.10: Consideration for early release pursuant to §550.58, Section 6.1.1(1) and (2) which states as follows:

(1) If an inmate is serving an SRA or "new law" sentence, he cannot be a contractual boarder, an INS detainee, or a pre-trial inmate.

While INS detainees and pre-trial inmate may be held in BOP custody, they cannot be serving a federal sentence under SRA or the "new law".

(2) the inmate's current conviction does not exclude him from early release according to the Characterization of Offenses Program Statement.

According to BOP Program Statements, an INS detainee is a person who has finished serving his state, local or federal sentence and is being held past his release date for immigration purposes. This is clearly not the case herein as the Petitioner is serving a federal sentence under the SRA and as such, cannot be considered to be an ICE Detainee as held in the Fifth Circuit's opinion in Gallegos-Hernandez.


Therefore, Petitioner submits that the government's argument is flawed, must fail and that this Court would be in error or complicit in the miscarriage of justice and ignorance if it ruled in favor of the Motion to Dismiss. He asks that the Court order the Respondent's to submit their long-overdue response and in lieu there-of, grant summary judgment in his favor.

Submitted on this 13 th day of September , 2012.


LUIS CARPIO

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to the Clerk, US District Court, Western District of Texas, 410 S. Cedar Street, Pecos, TX 79772 and the Office of the US Attorney for the Western District of Texas, 601 NW Loop 410, Suite 600, San Antonio, TX 78216 via first-class US mail, postage prepaid, on this 13th day of September, 2012.



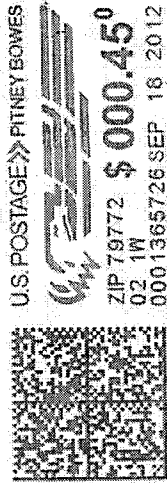
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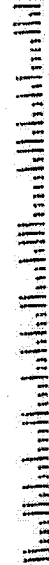
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To:
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Western District of Texas
Pecos Division
Attn. Clerk of The Court
410 South Cedar Street
Pecos, Texas 79772
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LEGAL DOCUMENTS

7977233202



Reeves County Detention III
Pecos, Texas 79772

DATE: 9.18.12

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